

E-filed 11/12/07

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10 (Correctly named and identified as Timberland Retail, Inc.)

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17 Attorneys for Plaintiff
18 DAVID LEE

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

22 DAVID LEE, an individual, on behalf of
23 himself and on behalf of others similarly
24 situated.,

25 Plaintiffs,

26 v.

27 THE TIMBERLAND COMPANY, a New
28 Hampshire corporation conducting business
in the State of California, and Does 1-100.,

29 Defendants.

30 Case No. C07 02367 JF

31 Arbitration Date: November 13, 2007

32 Judge: Jeremy Fogel

33 **STIPULATION AND PROPOSED ORDER
34 EXTENDING ADR DEADLINE AND
35 CONTINUING CASE MANAGEMENT
36 CONFERENCE**

37 WHEREAS:

38 1. Pursuant to Counsel's stipulation under Civil Local Rule 16-8 and ADR Local Rule 3-5,
39 ordered by the Court on August 27, 2007, the parties agreed to hold a private mediation by November
40 15, 2007. A private mediation was originally scheduled for November 13, 2007.

1 2. On September 17, 2007, the parties to this lawsuit filed a Joint Motion for Notice to
2 Potential Class Members. The Court granted the motion on September 19, 2007. The agreed-upon
3 notice was sent to all potential class members, who were Operations Managers who worked in
4 Timberland stores during the past three years in stores similar in size to the stores where Lee worked as
5 an Operations Manager. The deadline for opting in to the potential class was October 22, 2007. As of
6 that date, twelve Operations Managers submitted consents to join the litigation to plaintiff's counsel.
7 The parties have agreed that these consents are deemed effective on the date received by plaintiff's
8 counsel. Two additional Operations Managers did not opt-in by the agreed-upon deadline; however
9 Timberland agreed to include these two individuals in the potential class.

10 3. Lee and Timberland have exchanged data and information related to wage and work
11 histories for the fourteen potential class members that have opted-in. Since that exchange of
12 information, the parties have been engaging in productive discussions in an effort to resolve the claims
13 of Lee and the opt-in plaintiffs.

14 4. Given this accelerated schedule, both parties agree that they need for additional time to
15 assess the information in order to pursue settlement either with or without a mediator. Accordingly,
16 private mediation schedule for November 13, 2007, is premature. Accordingly, the parties cannot
17 comply with the November 15, 2007, ADR deadline.

18 5. The parties and the private mediator have agreed to reset the mediation for December
19 20, 2007, to allow the parties additional time to assess the relevant information and work toward an
20 amicable resolution.

21 6. At present, a case management conference is scheduled for November 16, 2007. This
22 was scheduled originally to occur after the November 15 ADR deadline. The parties request that the
23 case management be rescheduled so that it will occur after the December 20, 2007, mediation, as
24 originally contemplated.

1 NOW, THEREFORE, THE PARTIES STIPULATE AND AGREE and respectfully
2 request the Court to order as FOLLOWS:

3 1. To extend the ADR deadline to December 31, 2007.
4 2. To continue the November 16, 2007, case management conference until January 18,
5 2008.

6 Dated: Nov. 8, 2007

7 AKIN GUMP STRAUSS HAUER & FELD LLP

8 By Fraser A. McAlpine
9 Fraser A. McAlpine

10 Attorneys for Defendant
11 THE TIMBERLAND COMPANY
(Correctly named and identified as
12 Timberland Retail, Inc.)

13 Dated: Nov. 8, 2007

14 MORRIS AND ASSOCIATES

15 By Stephen B. Morris
16 Stephen B. Morris *by FAM*
17 Attorneys for Plaintiff
18 DAVID LEE *with permission*

19
20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21
22 DATED: November 12, 2007.

23 
24 United States District Judge
25 Jeremy Fogel

1
2 PROOF OF SERVICE
3

4 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO
5

6 I am employed in the County of San Francisco, State of California. I am over the age of 18 and
7 not a party to the within action; my business address is: 580 California Street, Suite 1500, San
8 Francisco, California 94104. On November 7, 2007, I served the foregoing document(s) described as:
9 STIPULATION AND PROPOSED ORDER EXTENDING ADR DEADLINE AND CONTINUING
10 CASE MANAGEMENT CONFERENCE on the interested party(ies) below, using the following
means:
11

12 Stephen B. Morris
13 Mark C. Hinkley
14 MORRIS AND ASSOCIATES
15 444 West C Street, Suite 300
16 San Diego, California 92101

17 Walter Haines
18 UNITED EMPLOYEES LAW GROUP
19 65 Pine Avenue, #312
20 Long Beach, CA 90802

21 BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the
22 respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and
23 mailing, following our ordinary business practices. I am readily familiar with the firm's practice of
collection and processing correspondence for mailing. On the same day that correspondence is placed
for collection and mailing, it is deposited in the ordinary course of business with the United States
Postal Service, in a sealed envelope with postage fully prepaid at San Francisco, California.

24 BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an
25 overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I
26 placed the envelope or package for collection and overnight delivery at an office or a regularly utilized
drop box of the overnight delivery carrier.

27 BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed
28 to the respective address(es) of the party(ies) stated above and providing them to a professional
messenger service for service.

29 BY FAX Based on an agreement of the parties to accept service by fax transmission, I faxed the
30 documents to the respective fax number(s) of the party(ies) as stated above. No error was reported by
31 the fax machine that I used. A copy of the record of the fax transmission(s), which I printed out, is
32 attached.

33 BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties
34 to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the
35 respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable
36 time after the transmission, any electronic message or other indication that the transmission was
37 unsuccessful.

38 I declare that I am employed in the office of a member of the bar of this court at whose
39 direction the service was made.

40 Executed on November 7, 2007, at San Francisco, California.

41 HOLLY B. TOSCHI
42 [Print Name of Person Executing Proof]

43 [Signature]